

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH 2006 JUN 19 P 4:48
CENTRAL DIVISION

DISTRICT OF UTAH

BY: DEPUTY CLERK

DALE STEVENS,

Plaintiff,

vs.

CLARK A. McCLELLAN,

Defendant.

ORDER ADOPTING REPORT AND
RECOMMENDATION

Case No. 2:06 CV 215 TC

All pretrial matters in the above case were referred to United States Magistrate Judge Paul M. Warner pursuant to 28 U.S.C. § 636(b)(1)(B). Before the court are the following motions: (1) Defendant's motion to dismiss; (2) Plaintiff's motion for default judgment; and (3) Plaintiff's motion to strike Defendant's answer and counterclaim.

Judge Warner issued his Report and Recommendation on May 31, 2006, finding as follows:

Defendant's Motion to Dismiss and Plaintiff's Motion for Default Judgment

None of Plaintiff's allegations demonstrate any basis for federal jurisdiction. Even if all of Plaintiff's allegations are true, this is a state contract action over which this court has no jurisdiction. Therefore, Defendant's motion to dismiss should be GRANTED and as a result, Plaintiff's motion for default judgment should be DENIED.

Plaintiff's Motion to Strike Defendant's Answer and Counterclaim

Plaintiff moved to strike Defendant's answer and counterclaim because Defendant's counsel's signature on that document indicated that he was representing the city of Vernal, Utah, rather than the Defendant. However, after filing the answer and counterclaim, Defendant's counsel promptly filed a notice of erratum and motion to correct the error. This court found that "the errata suffice[d] as notice of the error and correction." (Dkt. #12). Accordingly, Plaintiff's motion to strike Defendant's answer and counterclaim should be DENIED.

The parties were given ten days from the date of the issuance of the Report and Recommendation to file objections. Plaintiff filed a document entitled "Rebal to Report and Recommendation" on June 12, 2006.

The court has conducted a *de novo* review of Judge Warner's recommendation and agrees therewith. Accordingly, the Report and Recommendation is adopted as the order of this court. Defendants' Motion to Dismiss Plaintiff's complaint is GRANTED; Plaintiff's motion for default judgment and motion to strike Defendant's answer and counterclaim are DENIED.

DATED this 19 day of June, 2006.

BY THE COURT:



TENA CAMPBELL
United States District Judge